

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MELISSA J. GUSTAFSON,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:11-cv-00443-AGF
)	
FULL SERVICE MAINTENANCE)	
CORPORATION d/b/a)	
FAHY'S HEATING & COOLING,)	
)	
Defendant.)	

PLAINTIFF'S MOTION IN LIMINE NO. 1

Comes now Plaintiff, by her undersigned counsel, and for her Motion in Limine No. 1 to exclude any evidence or argument concerning the job performance of Plaintiff, states:

Plaintiff anticipates, based on the allegations of Defendant's counterclaim and the deposition testimony of Defendant's President, Dennis Fahy, that Defendant will attempt to present evidence that Plaintiff's job performance was deficient. Whether or not Plaintiff's job performance was substandard or deficient has bearing upon whether Plaintiff is entitled to overtime or payment of her final paycheck. Such evidence or argument should be excluded because "[e]vidence which is not relevant is not admissible." Fed. R. Evid. 402. Furthermore, such evidence would mislead and confuse the jury who are charged with determining issues of fact.

"Relevant evidence" means evidence having any tendency to make the

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. “Evidence which is not relevant is not admissible.” Fed. R. Evid. 402. “A defendant has no right to offer and a jury has no right to hear inadmissible evidence.” *U.S. v. Ceballos*, 593 F. Supp. 2d 1054, 1059 (S.D. Iowa 2009). The circumstances of the Plaintiff’s job performance have no bearing whatsoever on the factual determination of whether Plaintiff worked overtime or was not paid the full amount of her final paycheck.

This Court has broad discretion in determining the admissibility of evidence, *Fortune Funding, LLC v. Ceridian Corp.*, 368 F.3d 985, 990 (8th Cir. 2004), and should exercise its discretion to exclude evidence or argument concerning the job performance of Plaintiff.

BUTSCH SIMERI FIELDS LLC

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Certificate of Service

I certify that on June 15, 2012 this paper was served electronically through the automated ECF system, on the following counsel of record:

Party	Counsel
Defendant Full Service Maintenance Corporation	Mr. Aaron G. Weishaar Reinert Weishaar & Associates, P.C. 812 N. Collins, Suite 2 St. Louis, MO 63102

/s/ David T. Butsch